



Protection: paramount – Tips and Tricks of the Trade

In the recently burgeoning start-up / entrepreneurship phase that India is passing through, it is imperative that these futuristic companies be legally secured. Legal security comes in various flavours. These include contracts, user agreements, end user license agreements, investor agreements, co-founder agreements, employee-employer agreements, registration of company, tax agreements, and the oft-neglected Intellectual Property Rights. This article is a primer relating to various types of Intellectual Property Rights and mainly relating to direct RESOURCES wherein an entrepreneur can begin to become self-aware.



1) Trade Marks

What to do? When to do? And Why?

A trade mark, essentially, protects a brand name and logo, product name and logo, company name and logo, website name and logo, application name logo, and the like names and logos. It is a distinctive sign or indicator used by an individual, business organization, or other legal entity that the products or services to its consumers with which the trade mark appears originate from a unique source, and to distinguish its products and / or services from those of other entities. A trademark protects a name brand or logo that is used in a commercial application to distinguish one company from another.

Check the Register of Companies is not enough! Even obtaining a domain name is not enough! Conduct a jurisdiction-wise trade marks' search (most searches are free, if you know where to look)

Free Search:

Check the Trade Mark Registry (for the country in which you wish to practice your trade):

1) Select your class: _

http://ipindiaservices.gov.in/tmrpublicsearch/classfication_goods_service.htm

2) Conduct a search, class-wise, by inputting your text in permutations and combinations:

<http://ipindiaservices.gov.in/tmrpublicsearch/frmmain.aspx>



3) Search Portal, Singapore: _

<http://tmsearch.ipos.gov.sg/eTMSearch/eSearchOption.jsp>

4) Look at the mark and corresponding goods and services that have been declared.

5) Conduct an online search. If an unregistered mark exists, it is still dangerous territory to venture into.

6) Search Portal, USA: _

<http://www.uspto.gov/trademarks/process/search/>

7) Search in foreign jurisdictions, too, where you intend to scale your business. Always think, globally. Individuals and Companies have spent tremendous amounts of money in legal fees in order to secure rights, overseas, when they did not think globally (e.g. Parle in Australia, Hakoba in USA, Hilton in Mount Abu).

Professional Help:

A TRADE MARK AGENT or a TRADE MARK ATTORNEY is licensed to represent a client before the State (Trade Mark Registry and Offices of that state).

Securing Rights:

The following can be registered as a trade mark but a mark must be distinctive and capable of distinguishing your goods or services from similar ones of other traders:

- letters
- words
- names
- signatures
- labels



- shapes
- colours
- sounds

How to determine infringement?

Always be on the lookout for similarities in the market. These may be visual similarities for logo marks, phonetic similarities for word marks, literal similarities for word marks, and the like.

Gather evidence of dates of inception, use, continuous use, market size, market similarity, class similarity, goods and services.

Conduct an online Search – Google it. Create news alerts.

Act associated with Trade Marks:

Trade Marks Act, 1999 and the Trade Mark Rules, 2002

Symbols:

TM – when trade mark is applied for

® - when trade mark is granted



2) Patents

What to do? When to do? And Why?

A patent essentially relates to inventions in the field of science and technology.

A patent is a set of exclusive legal rights granted by a state (national government) to an inventor or its assignee for a limited period of time in exchange for a public disclosure of an invention. A patent is a monopoly of sorts which allows a patent owner to carve their own niche in the business market by defining their 'new' territory. Specifically, the grant of a patent allows a patent owner to prevent others from making / use /sale of the patented product / process within the jurisdiction in which the patent has been granted.

Some companies patent technologies with a business strategy of licensing their inventions. If not, they pursue infringers and sue them. This forms a part of an offensive strategy.

Some companies patent technologies with a business strategy of merely creating a legal fence in relation their technologies, in order to increase the culture of innovative research and development, and to capture market size based on innovative technologies. This forms a part of a defensive strategy.

Innovation may be a part of a company's products, services, as well as business processes. And all can be patented.

INK IDEÉ

ink your idea

Do not disclose your idea without securing confidentiality clauses. If there is reason to believe that the idea is new and inventive, file for a PROVISIONAL PATENT APPLICATION. It is an effective form of securing global protection for a period of 12 months. Sign NDAs and confidentiality agreements before disclosing anything.

Free Search:

Patents are territorial. A patent applied for in India is only valid in India. A patent applied for in USA is only valid in USA. Hence, an inventor needs to apply in ALL markets where they intend to practice. This strategy (time-wise and cost-wise) needs to be defined.

1) Search Portal, India: _

<http://ipindiaservices.gov.in/patentsearch/search/index.aspx>

2) Search Portal, Global: _

<http://worldwide.espacenet.com/>

3) Search Portal, WIPO: _

<http://www.wipo.int/pctdb/en/>

4) Search Portal, USA: _

<http://patft.uspto.gov/>

5) Search Portal, Singapore: _

<http://www.epatents.gov.sg/PE/>

6) Search Portal, Australia: _

<http://www.ipaustralia.gov.au/auspat/index.htm>



Always, read the claims and corresponding drawings to understand the real gist of the patent.

Professional Help:

A PATENT AGENT or a PATENT ATTORNEY is licensed to represent a client before the State (Patent Office and Offices of that state). For each invention to be granted a secure patent, a patent draft needs to be submitted to the Patent Office. This patent draft is a techno-legal description of the invention and is written in a language, colloquially referred to as '*patentese*'.

A PATENT AGENT or a PATENT ATTORNEY also helps with strategies of filing and prosecution.

ALWAYS see to it that you seek help of only registered Patent Agents. Ask for it.

Check if the person you are talking to is a registered Patent Agent, here:

<http://ipindiaservices.gov.in/Agentregister/agentlisttest.aspx?AspxAutoDetectCookieSupport=1>

A PATENT AGENT is duty-bound by his / her license to respect confidentiality and risks losing his / her license to practice if he / she were to misrepresent a client.

A 'consultant' is not bound by any such legal obligations.

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Securing Rights:

In today's world of cut-throat competition, innovation and innovative products and services form the defining cornerstone for a company's sustainability, for their increase in market size, and essentially for capturing the consumer's eye by offering something new, something advanced, something useful, and something fruitful.

These parameters form the key criteria for patents, too. A patent is granted on the following three counts:

- Novelty
- Inventive Step
- Industrial Applicability

Each country includes a list of non-patentable subject matter. India's list is [here](#).

How to determine infringement?

Always be on the lookout for similarities in the market

Gather evidence of dates of inception, use, continuous use, market size, market similarity, class similarity, goods and services.

Conduct an online Search – Google it. Create news alerts.

Refer to the patent document that you own. Refer to its claims. Step-wise, draw similarities between the claims and a competing product / service in order to

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‘determine infringement’. If all the features or steps of claim 1 exist in the competing product / service, infringement is said to occur.

Act associated with Patents:

Patent Act, 1970 and the Patent Rules, 2003

Symbols:

Patent applied for (along with patent application number): when patent is applied for

Patented (along with patent registration number): when patent is granted



3) Copyrights

What to do? When to do? And Why?

A copyright is a type of intellectual property protection that covers works of art and similar things. This includes writing, illustrations, music, films, and just about any other artistic expression of ideas or concepts. Copyright is an automatic right. It may not be registered. However, registration paves an easier way in cases of infringement in order to determine creator of the work.

Website layouts, source codes, graphical user interfaces; all form a part of copyrights.

Free Search:

1) Search Portal, India:

<http://copyright.gov.in/>

2) Search Portal, USA: _

<http://www.copyright.gov/records/>

Professional Help:

A TRADE MARK AGENT or a TRADE MARK ATTORNEY is licensed to represent a client before the State (Copyright Office and Offices of that state).

Securing Rights:

Copyrights protect important aspects of a website or an application.



The following may be protected under copyright law:

- Literary works (e.g., written works, graphical user interfaces, website layouts, source codes of computer programs)
- Dramatic works (e.g., scripts for films and dramas)
- Musical works (e.g., melodies)
- Artistic works (e.g., paintings, photographs)
- Published editions of the above works
- Presentations
- Business Plan
- Brochures
- Sound recordings
- Films and movies
- Television and radio broadcasts
- Television programmes
- Performances

How to determine infringement?

Keep a tab on the market; people in similar of allied fields. Be extremely cautious while outsourcing your 'creative' work or while hiring a contractor. Copyright resides with the creator or author. Hence, legal agreements need to be pre-decided in order to allow transfer of copyright before expiration of contract. Agree with contract workers, before hands.

INK IDEÉ

ink your idea

Act associated with Copyrights:

Copyright Act, 1957 and the Copyright Rules, 1958

Symbols:

© - copyright, upon creation of original matter



4) Designs

What to do? When to do? And Why?

A design registration or an industrial design right is an intellectual property right that protects the visual aspects or the aesthetics of any product. Shape and configuration protection warrants a design registration.

Free Search:

1) Search Portal, India: _

<http://ipindiaservices.gov.in/designapplicationstatus/designstatus.aspx>

2) Search Portal, Singapore: _

<http://designsearch.ipos.gov.sg/eDSearch/Search.jsp>

3) Search Portal, Australia: _

http://pericles.ipaustralia.gov.au/adds2/adds.adds_simple_search.paint_simple_search

Professional Help:

A PATENT AGENT or a PATNET ATTORNEY is licensed to represent a client before the State (Design Registry and Offices of that state).

Securing Rights:

A design registration is for an "article". The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article.



Thus, designs of industrial plans, layouts and installations cannot be registered under the Act.

The design should be applied or applicable to any article by any industrial process. Normally, designs of artistic nature like painting, sculptures and the like which are not produced in bulk by any industrial process are excluded from registration under the Act.

How to determine infringement?

Always be on the lookout for similarities in the market

Gather evidence of dates of inception, use, continuous use, market size, market similarity, class similarity, goods and services.

Conduct an online Search – Google it. Create news alerts.

Refer to the patent document that you own. Refer to similarities in design. Find differentiations. Seek expert opinion.

Act associated with Designs:

Designs Act, 2000 and the Designs Rules, 2001

Symbols:

Design Registration No.